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**OFFICE OF PETITIONS**

In re Application of  
Akitsugu Ninjouji, et. al.  
Application No. 09/437,111  
Filed: November 9, 1999  
Attorney Docket No. SUD-002-USA-P

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 3, 2001, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed December 8, 1999. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned after midnight February 8, 2000.

It has been made of record that Petitioner claims small entity status. Since the Office misapplied the petition fee, and surcharge for the late filing of an oath/declaration as large entity fees, petitioner is entitled to half the refund. Therefore, fees totaling \$705.00 will be refunded to Petitioner's deposit account.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. If the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3) and petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

The application file is being forwarded to the Office of Initial Patent Examination Unit for further processing.

Telephone inquiries concerning this decision should be directed to Andrea Coram at (703) 308-6711.

Andrea Coram  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy